

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:)	
)	
)	GN Docket No. 16-142
Authorizing Permissive Use of the “Next)	
Generation” Broadcast Television Standard)	

**OPPOSITION OF EDGE SPECTRUM, INC. TO ATVA PETITION FOR
RECONSIDERATION**

Introduction

The ATVA petition for reconsideration¹ does not even rise to the level of a solution in search of a problem. To the contrary, it purports to solve a problem that does not exist and creates the much more serious issue of blocking or seriously retarding the voluntary adoption of a vastly superior “next generation” broadcast standard. A grant of the petition would serve only to stifle innovation, reduce competition, increase costs, and disadvantage consumers.

As the Commission fully understands, ATSC 3.0 offers a wealth of new opportunities for broadcasters which will greatly benefit consumers and help to revitalize broadcasting in

¹ The ATVA Petition, filed herein on March 5, 2018, addresses the FCC’s Order 17-158, in *Authorizing Permissive Use of the “Next Generation” Broad. Television Standard*, 32 FCC Rcd. 9930 (2017)(hereafter, “Order”). ATVA is the “American Television Alliance” whose members consist of MVPDs, programming distributors, and “trade associations.” Edge Spectrum, Inc (“ESI”), described further below, opposes the ATVA request to prohibit LPTV from implementing a “flash cut” to ATSC 3.0 and instead require waivers. While ESI does not support the balance of the ATVA Petition nor the NCTA’s petition, as they are equally unnecessary, ESI assumes other commenters will address them.

numerous ways. Thus, the Commission's Order struck a delicate balance of maintaining regulations that are truly necessary to protect the public interest while maximizing the incentives for a voluntary but expeditious roll out of—and eventual transition to—ATSC 3.0. The ATVA petition would not only destroy those incentives, but also create needless regulatory barriers to investment in the innovation that ATSC 3.0 will bring.

ESI holds 283 LPTV licenses and is building a nationwide ATSC 3.0 network to add a broadcast-broadband extension to the Internet to address the explosive growth of OTT video services.² ESI's principal goals are to: 1) consolidate and deploy a nationwide network for high-quality IP multi-casting over existing low power TV ("LPTV") spectrum; 2) dramatically improve access for broadband video distribution to the public in underserved markets, while also delivering a consistent and high-quality user experience; and 3) reduce by orders of magnitude the cost for delivery of video and audio content, digital information and IoT services. ESI is on the verge of using ATSC 3.0 to bring to the market exactly the kind of innovation that the Order contemplated and sought to promote. In so doing, ESI and others will benefit the public, particularly the unserved and underserved, such as suburban, rural, and low-income households. But ATVA's petition, if granted, would delay and increase the costs of such innovation, disadvantaging consumers in the process.

² ESI did not participate directly in this docket prior to the Order, but has worked with and through its business partners and trade associations and has followed this proceeding closely and with great interest.

Discussion

I. Exempting LPTV From Simulcast Requirements is Essential to a Rapid Voluntary Deployment of ATSC 3.0 and Was a Rationally-Based Distinction From Full Power.

The Commission's Order did an exemplary job of balancing several competing interests. For full power stations, simulcasting is required. This ensures that the vast majority of the public who are served by ATSC 1.0 now and for the foreseeable future³ will continue to be served without disruption or incurring added costs. As a practical matter, full power stations must continue to offer an ATSC 1.0 signal to generate the advertising revenues that are needed to support their business model now and for the foreseeable future. Since full power must continue to transmit in ATSC 1.0 for business reasons anyway, the near-term regulatory cost of that requirement is effectively zero. Thus, the regulatory cost of this requirement to full power broadcasters is minimal, especially compared to their financial resources.⁴

In sharp contrast, LPTV is relatively resource-constrained, as the Commission has implicitly acknowledged.⁵ Likewise, both the revenues and viewership of LPTV constitute a tiny fraction of the revenues and viewership of full power stations. Thus, the relative cost of simulcasting would be much greater for LPTV. Moreover, as the Commission recognized in the Order, LPTV is already challenged by the digital transition and re-packing.⁶ It is questionable that all LPTV stations would survive a simulcasting requirement on top of those challenges.⁷

³ Both by over-the-air ("OTA") and by MVPDs.

⁴ Which may explain why NAB embraced simulcasting for full power. *See, e.g.*, FNPRM Comments of the Nat'l Assn. of Broadcasters (Feb. 20, 2018).

⁵ *See, e.g.*, FCC 11-110, Second Report and Order, ¶ 8, *In the Matter of Amendment of Parts 73 and 74*, MB Dkt. No. 03-185 (July 15, 2011); *see also* <https://www.fcc.gov/general/low-power-tv>.

⁶ *See* Order, ¶¶ 41-42.

⁷ *See id.*

An important distinction from full power TV broadcasters is that the cost of simulcasting is not as hypothetical or remote for LPTV as it may be for full power. There is a very realistic likelihood that a material number of LPTV stations will want to transition to ATSC 3.0 at the earliest possible date. LPTV has several key distinctions from full power broadcasters regarding the voluntary transition, including: 1) the potential demand for ATSC 3.0 “reverse lighthouse” service for full power broadcasters; 2) the dearth of LPTV revenues to support successive transitions to digital and then ATSC 3.0; and 3) the ability for LPTV stations to experiment with innovative new services enabled by ATSC 3.0 and to better serve the public interest by providing access to services that are struggling to keep up with consumer demand for on-demand personal video services.

Because LPTV Construction Permit holders may want to or need to transition straight to ATSC 3.0, the cost of a simulcast rule would be very real and immediate for them, not theoretical or in the distant future. And most critically, this real cost burden proffered by ATVA’s petition would not fall just on LPTV stations, but on the entire emerging ATSC 3.0 ecosystem, as the Commission’s Order implicitly acknowledged. An LPTV station or collection of stations probably presents full power stations with their best option to begin the transition to ATSC 3.0. If LPTV does not have an artificial regulatory simulcast obligation,⁸ the transition can begin almost immediately. The option was well-stated—if not understated—in the Order:

Exempting LPTV and TV translator stations from the local simulcasting requirement will have the added benefit of allowing these stations to serve as “lighthouse” stations, thereby providing an ATSC 3.0 host option for other full power, Class A, LPTV, and TV translator stations that wish to partner with them. LPTV stations could, therefore, serve an important role in market-wide simulcast arrangements by permitting other stations to experiment with 3.0 service while maintaining ATSC 1.0 service on their existing facility. As noted above, our goal

⁸ As opposed to a market-oriented business “obligation,” which some LPTV stations will definitely have, as discussed in the next section.

is to encourage Next Gen TV broadcasters to initiate 3.0 service on another facility initially while maintaining their 1.0 simulcast signal at the station's existing location, when possible, to help avoid disruption to viewers and MVPDs. LPTV stations that elect to transition directly and to serve as ATSC 3.0 host stations could thus play a significant role in facilitating the conversion to 3.0 technology.

Order, ¶ 43 (footnotes omitted).

The Order got it right. A reverse lighthouse could well be delayed for years if LPTV cannot do a flash cut. And a forward lighthouse in which a full power station moves its ATSC 1.0 signal to an LPTV is all but impossible for practical and regulatory reasons. Specifically, the Order requires that if a full power station moves its ATSC 1.0 signal to another transmitter, it must provide substantially the same coverage. *E.g.*, Order, ¶ 31.⁹ The very nature of LPTV means that an LPTV transmitter is unlikely to meet this requirement. The practical impact of ATVA's request would be that full power could only implement ATSC 3.0 if two full power stations partnered and one of them stopped transmitting ATSC 1.0 from their main transmitter.¹⁰ This is a very narrow opportunity¹¹ that could face a number of free market business challenges that do not exist for LPTV lighthouses.¹²

⁹ "Full power broadcasters implementing 3.0 service must continue to provide 1.0 service to the station's existing community of license and comply with our community of license signal requirement."

¹⁰ A full power station might also seek to temporarily occupy a vacant channel in a market. But given the intense opposition to that possibility from some commenters in this proceeding, that option seems rather uncertain as well. *See, e.g.*, Comments of Microsoft, GN Docket No. 16-142 (Feb. 20, 2018).

¹¹ LPTV stations and TV translators make up the largest number of licensed television facilities in the U.S. This includes 1,920 LPTV stations and 5,647 TV translator stations, accounting for over 80 percent of the total number of all television broadcast facilities. *See* Broadcast Station Totals as of March 31, 2018 (rel. Apr. 9, 2018), available at: https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0409/DOC-350110A1.pdf. Just based on sheer numbers and consequent diversity of choices a full power station is much more likely to be able to negotiate a lighthouse agreement with an LPTV than another full power station.

¹² It must be remembered that in the real world two full power stations in exactly the same market are likely to be roughly equal, vigorous, head-to-head competitors, for the same demographics of viewers. The idea that a full power station will relinquish its ATSC 1.0 transmitter to its arch competitor for an untried and untested new technology may be little more than wishful thinking. An LPTV station is more likely to be a niche player that presents complementary business interests and much less of a competitive threat to the full power station.

The alternative ATVA posits is that LPTV must file and the FCC must process thousands of LPTV waivers. Both the FCC and LPTV stations would face resource constraints in such an environment. It is hard to imagine a more daunting regulatory barrier to adoption of a new technology. Indeed, even though the Internet had a well-established market and demand for services the Commission recently found that the 2015 “Net Neutrality” rules significantly curtailed investment in Internet access services.¹³ In contrast, ATSC 3.0 currently has no equipment and no customers. Adding needless and difficult regulatory barriers—not to mention uncertainty¹⁴—will discourage investment and innovation. Those barriers might benefit MVPDs by insulating them from the need to modernize and improve their services, but it would deny consumers the options and benefits of an exciting new technology, at least for a time.

In sum, LPTV licensees are uniquely positioned to support the full power broadcasters initial transition to ATSC 3.0.¹⁵ As a voluntary standard, there are no coverage requirements for the new ATSC 3.0 networks, which enables the LPTV broadcasters to address an important need for the initial deployment of next generation broadcasting services in concert with full power broadcasters who must retain their existing ATSC 1.0 signal coverage as a simulcast.

¹³ Declaratory Ruling, Report and Order, and Order, FCC 17-166, ¶¶ 87-108, *In the Matter of Restoring Internet Freedom*, WC Dkt. No. 17-108 (Rel. Jan. 4, 2018)(finding “considerable ... foregone investment and innovation”).

¹⁴ Regulatory uncertainty is often the biggest barrier to investment. ATVA tries to make its Petition seem innocuous by offering the possibility of waivers. But to an investor, an exemption codified in a rule offers regulatory certainty. A waiver under a new rule that may be ill-defined and has no precedent creates extreme regulatory uncertainty. How hard will it be to get a waiver? How long will it take? How much will it cost? Investors faces enough business and market uncertainties already trying to create a market with a brand-new technology. Layering on regulatory uncertainties must be avoided unless absolutely necessary to protect some other **known and material** public interest benefit. No such benefit exists here.

¹⁵ The Commission has recognized the greater flexibility enjoyed by LPTV in the past. *See, e.g.*, DA 18-124, MB Dkt. No. 16-306 (rel. Feb. 9, 2018)(“LPTV/translator stations have greater flexibility ... than full power or Class A stations due to their ability to move transmitter site locations over large distances ... and the absence of a requirement to replicate coverage areas.”).

II. The Harms ATVA Asserts Range From Non-material to Non-existent and are Outweighed by the Benefits of Regulatory Flexibility For LPTV, as the Commission Found in the Order.

ATVA's purported "large and increasing number of [low-power] stations [that] maintain major-network affiliations"¹⁶ appears to be hyperbole, if not fiction. It certainly was not supported by the record prior to the Order and is not supported now.¹⁷ ATVA cites only its September 29, 2017 *ex parte* letter filing in support of this broad statement.¹⁸ But that letter lumps LPTV with Class A stations. So, it is impossible to know from ATVA's letter how many LPTV stations are network affiliates, as opposed to Class A stations—for which the Commission has already required simulcasting. And even if all 124 of the stations were LPTV rather than Class A, the relative numbers of affiliates for LPTV pale in comparison to full power. A recent Commission list of full power stations shows 1,780 full power stations, of which 92 percent are listed as having a network affiliation.¹⁹ In contrast, the most recent FCC Report of Broadcast Station Totals shows 1920 LPTV stations.²⁰ Some unknown number of those—123 or fewer according to AVTA—are network affiliated.

Thus, even if the sparse and unsupported data provided by ATVA is viewed most favorably (and unrealistically) in favor of ATVA's argument, over 90% of full power stations are network affiliates, while something less than 6.4% of LPTV stations are network affiliates. Far from supporting treating LPTV the same as full power for simulcast purposes the available data fully support the Commission's disparate treatment. It is hard to imagine a stronger and more

¹⁶ ATVA Petition at 5-6.

¹⁷ Of course, if ATVA attempted to support this statement now, it would have to justify introducing new facts by showing why they could not have been provided previously. 47 C.F.R. § 1.429(b).

¹⁸ The letter asserted that an unnamed "SNL Kagan report" supports the data. But the report was not provided, nor was a citation that would enable the report to be readily located.

¹⁹ See https://transition.fcc.gov/mb/docs/eng/list_of_full_service_stations_11_2016.xlsx.

²⁰ https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0409/DOC-350110A1.pdf.

rational basis for the regulatory distinction that the Commission made in the Order. And quite apart from the huge difference in the statistics upon which ATVA tries to rely, full power and LPTV stations are subject to fundamentally different business challenges and opportunities from the ground up. To treat them the same would be arbitrary and at the same time create a needless barrier to implementation of ATSC 3.0.

Requiring thousands of simulcast waiver petitions for LPTV to address the circumstances of a small percent of them would be non-sensical, particularly when free market forces are as strong as they are here. The very few LPTV stations that carry a major network are likely to have a large number of viewers and significantly more advertising revenues than the average LPTV station. They will also have greater costs, requiring the preservation of that greater revenue stream. Accordingly, for this rare breed of LPTV stations the constraints of the free market will make the odds it will abandon a significant number of viewers—whether OTA or carried by an MVPD—almost infinitesimally small. Out of necessity these few LPTV stations will simulcast voluntarily if and when they transition to ATSC 3.0. And unlike full power stations they will have realistic options to simulcast either with a full power or with another LPTV station, since their respective coverage areas may be similar.

Finally, unlike full power, LPTV enjoys no must carry rights. Any LPTV or translator carrying the signals of a major network operator have had to negotiate MVPD carriage by contract, not by regulatory fiat. Thus, any LPTV that has carriage rights would have to negotiate with an ATVA member before transitioning to ATSC 3.0 if it wanted to ensure continued carriage.

Conclusion

The Commission's Order expressed a clear desire not to hamstring the ATSC 3.0 rollout so that it would take many years, as did the transition from analog to digital. Grant of the ATVA Petition could well cause the exact delay and frustration of new and superior technology that the Commission sought to avoid. The Commission properly consider the ATVA's assertions in its Order and rejected them based on a well-developed record and sound and compelling public policy grounds. For the foregoing reasons as well as the other reasons discussed in the Order, the Commission should again reject ATVA's arguments.²¹

Respectfully submitted,

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²¹ Indeed, the petition should probably be dismissed or denied by the Bureau. Arguably it does "not warrant consideration by the Commission" for one or more of the reasons set forth in 47 C.F.R. § 1.429(l).

CERTIFICATE OF SERVICE

I, Maureen Halligan, on behalf of Edge Spectrum, Inc., hereby certify that on this 13th day of April, 2018, I provided copies of the foregoing Opposition of Edge Spectrum, Inc. to ATVA Petition for Reconsideration by first-class mail, postage prepaid, to the following:

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